

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-161

December 11, 2002

PUBLIC UTILITIES COMMISSION
Interim Electric Energy Conservation
Programs

PROTECTIVE ORDER
NO. 2 (Small Business
Program
Implementation
Contractor RFP)

By this Order, the Presiding Officer grants protection to the bid proposals delivered to the Division of Purchases for submission to the Commission in response to the Request for Proposals (RFP) for an Implementation Contractor for Small Business Program, during the pendency of the proposal evaluation process. The Presiding Officer also grants protection to those pages within the bid proposals that contain confidential business information and that are labeled as "Designated Confidential Information" by the bidders.

PL 2001, Ch. 624, (The Conservation Act) enacted during the second session of the 120th Maine Legislatures, directs the Maine Public Utilities Commission (the Commission) to develop and, to the extent of available funds, implement energy conservation programs. As part of that mandate, the Commission intends to establish an energy efficiency program for small businesses throughout Maine, based on a combination of information and educational activities and direct incentives for small business owners, to encourage them to purchase and install energy efficient products and implement energy efficient business practices. The program will be delivered through a network of cooperating program allies, recruited by an Implementation Contractor from Maine contractors and suppliers. The Implementation Contractor will support the program with a marketing and education effort, delivered directly and/or through cooperating Maine business associations.

By the RFP, the Commission is seeking an Implementation Contractor, who will provide program marketing and outreach and support services for the program. Proposals were due pursuant to the RFP by 2:00 p.m. on November 7, 2002.

The customary commercial practice is to keep proposal or bid information confidential during the evaluation process. During a discussion with potential bidders at a bid conference on October 16, 2002, many bidders stated the view that their bids contained confidential business or proprietary information that they believed should remain confidential, and that the failure to keep such information confidential may affect their decision to submit a proposal.

The Presiding Officer suggested to the potential bidders that the Commission will treat all proposals as confidential during the evaluation process.¹ After selection of the winning proposal is complete, proposals will cease to be treated as confidential, except that each bidder may indicate that certain parts of his/her proposal contain confidential business or proprietary information and that these parts of the bid will be treated as confidential.

By 35-A M.R.S.A. § 1311 and 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure, the Commission is authorized to protect confidential commercial information from disclosure or to permit disclosure only in designated ways. Based upon these discussions and the Commission's experience in administering other bid processes, the Presiding Officer finds that the confidentiality of the proposal information must be maintained during the evaluation process and that bidders' confidential business or proprietary information must remain confidential even after evaluation. Proposals submitted in response to our Small Business Program Implementation Contractor RFP will be held confidential during the evaluation process. After the evaluation is complete, the proposals will no longer be protected by the terms of this order except for those pages of the proposal that the bidder asserts contain confidential business or proprietary information and that are labeled "Designated Confidential Information."

Accordingly, it is

O R D E R E D

1. Subject to findings under the procedure described in paragraphs 2 and 3 below that, during the evaluation process, all proposals submitted and, as described above, all information labeled by bidders as "Designated Confidential Information" shall be considered "Designated Confidential Information" for purposes of this Order and, until such time as this order is modified, access to Designated Confidential Information shall be limited as described in paragraph 4 below.
2. That until further order by the Commission, all designated confidential information shall, unless removed from the coverage of this order as provided in paragraph 3 below be and remain confidential. Designated confidential information shall not be disclosed for any purposes except solely and in accordance with this order. No person to whom access to designated confidential

¹Bidders were generally of the view that, while the bid proposals should be confidential during the evaluation process, the list of individuals or entities who submitted bids would be publicly available. The practice of the Division of Purchases is to publicly announce the name of bidders.

information is accorded pursuant to paragraph 4 of this order shall disclose or reveal directly or indirectly, the contents of the designated confidential information to others except as provided in paragraphs 5 and 6.

3. That the characterization and designation of any documents or other information as Designated Confidential Information may be challenged by any interested person by motion and upon reasonable prior notice and an opportunity for hearing. Upon the entry of an Order granting such a motion, the provisions and restrictions of this order shall cease to bind any persons with respect to the documents or information that the Order granting the motion shall expressly and clearly remove from the coverage of this Order.
4. That, unless this Order is modified, access to Designated Confidential Information shall be limited to Commission members, Commission employees, and Commission consultants hired to assist the Commission in this docket.
5. That, unless this Order is modified, no copies of Designated Confidential Information furnished by bidders shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Information.
6. That the restrictions upon, and obligations accruing to, persons who become subject to this order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known.
7. That should any Designated Confidential Information be forwarded to the courts of this State in accordance with applicable law and procedures, it shall be under seal and so designated in writing for the information of the court.
8. The Designated Confidential Information furnished by bidders pursuant to this Order shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, until this Commission or its authorized presiding officer shall otherwise order.

9. That this order may be modified on motion of the Commission upon reasonable prior notice to the utilities and bidders and an opportunity for hearing.

Dated at Augusta, Maine, this 11th day of December, 2002.

BY ORDER OF THE PRESIDING OFFICER

James A. Buckley